HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 5981 OF 2006

ORDER:

This Writ Petition is filed seeking a writ of mandamus, to declare the action of the respondents in excluding the petitioners at the stage of technical bids, pursuant to the tender notice dated 3-3-2006 inviting tenders for printing of the Government Nationalized Text books and Work Books from Class I to Class X for the academic year 2006-2007, as arbitrary and illegal and for a consequential direction to the respondents to accept the tenders submitted by the petitioners for award of the contract.

The Directorate of Andhra Pradesh Government Text Book Press, Hyderabad, has issued tender notice dated 3.3.2006 in Rc.No.1309/T3/2006, inviting bids for printing of text books for the academic year 2006-2007 from the private agencies. The tender process provides that sealed tenders shall be super scribed as Cover-I, i.e. Technical Bid, and, Cover-2, i.e. particulars of rates quoted as per Clause 26 of the tender conditions.

One of the conditions of eligibility is with regard to turnover i.e. the bidder must have at least a turnover of Rs.3.00 Crores for the last three consecutive financial years. In support of this, the bidder has to submit Xerox copies of the annual accounts and audited statements certified by a Chartered Accountant. There are certain limitations for the tenderers also. One of the limitations is that the accepted tenderers shall not publish or sell or encourage any guides/work books/key books for any text books brought out by the Directorate of School Education, AP, Hyderabad.

The four petitioners in this Writ Petition have obtained tender

schedules and submitted their bids as per the conditions notified in the tender notice in two covers, namely, Cover-1 and Cover-2. It is stated that the first and second petitioners are publishers, third petitioner is a book distributor and fourth petitioner is an SSI Unit having experience in printing and publishing. The particulars with regard to turnover of the petitioners, as stated in the affidavit filed in support of the Writ Petition, are as follows:

Petitioner No.1:

2002-2003	--	Rs.1.46 Crores
2003-2004	--	Rs.1.66 Crores
2004-2005	--	Rs.2.04 Crores.

Petitioner No.2:

2002-2003	--	Rs.1.79 Crores
2003-2004	--	Rs.2.03 Crores
2004-2005	--	Rs.2.96 Crores.

Petitioner No.3:

2002-2003	--	Rs.2.59 Crores
2003-2004	--	Rs.3.45 Crores
2004-2005	--	Rs.3.51 Crores.

Petitioner No. 4:

2002-2003	--	Rs.0.94 Crores
2003-2004	--	Rs.0.63 Crores
2004-2005	--	Rs.0.81 Crores.

It is submitted by Sri S.Ramachandra Rao, learned Senior Counsel appearing for the petitioners that though the petitioners are having sufficient turnover of Rs.3.00 Crores as per the tender conditions, but, however, they were disqualified in technical bids itself, illegally and arbitrarily. It is further submitted by the learned Senior

Counsel, that no reasons are notified to the petitioners and there was no transparency in the tender process. Further, it is the case of the petitioners that some of the tenderers, namely, M/s.Dachepalli Kistaiah & Sons, and, M/s.Card Box & Co., Hyderabad, are in the business of publishing guides/key books, inspite of the same, their bids were considered contrary to and in violation of the notified tender conditions.

At the stage of admission, counter affidavit is filed on behalf of the respondents 1 to 3. In the counter affidavit, it is stated, that the Government has issued G.O.Rt.No.88, Education (SE.C&TBP) Department, dated 13-2-2006 constituting a Committee with the Director of School Education as Chairman, and, other members, to workout the modalities for printing and supply of text books by outsourcing for the year 2006-2007. It is stated that the Government further issued G.O.Rt.No.140, Education (SE.C& TBP) Department, dated 28-2-2006, according permission to follow the open tender system specifying terms and conditions therein. In the counter affidavit, it is stated that out of 21 bidders responded to the tender notice, only 10 bidders have fulfilled the conditions prescribed; as such, their price bids were opened.

It is submitted by the learned Government Pleader appearing for the respondents 1 to 3, that as per the particulars furnished by the petitioners, they did not satisfy the turn-over criterion, and, therefore, they became ineligible to be considered further, thereby, disentitling their price bids to be opened. It is further submitted by the learned Government Pleader, that the other condition with regard to prohibition for publishing, selling or encouraging any guides will come into play only after the contract is awarded and the same is not a condition to be satisfied/fulfilled during the tender process.

Further, it is submitted by Sri D.Prakash Reddy, learned Senior Counsel appearing for the fourth respondent, who is impleaded at the admission stage, that the condition with regard to turnover specifically provides that the bidder must have a minimum turnover of Rs.3.00 Crores for the last three consecutive financial years and from the particulars furnished by the petitioners, it is very clear that the said condition is not fulfilled by the petitioners, thereby disabling their price bids to be considered.

For considering the submission as to turnover, a perusal of the condition with regard to turnover laid down in Clause 6(iii) of Tender Schedule is necessary and the same reads thus:

> "**Turn Over**: The bidder must have at least a turnover of Rs.3.00 Crores for the last three consecutive financial years. In support of this, he has to submit the Xerox copies of the annual accounts (ledger Accounts) and audited statements certified by a Chartered Accountant."

From the above clause it is clear that the bidder must have at least a turnover of Rs.3.00 Crores for each financial year preceding the tender-year and it is not the turn over of Rs.3.00 crores for the last three years put together as pleaded by the learned Counsel for the petitioners. The word '*for*' occurring before 'the last three consecutive financial years' amply makes it clear that the turn over of Rs.3.00 Crores is for each financial year and that too, for three years consecutively. In that view of the matter, even taking into consideration the figures furnished by the petitioners with regard to turn over, they have not fulfilled the condition with regard to turnover of Rs.3.00 Crores as required in tender conditions.

The other submission of the learned Senior Counsel appearing for the petitioners, that two other tenderers who were qualified for opening of their final bids, are publishing guides, and, some of the tenderers have submitted false information with regard

to turnover, cannot be accepted. The condition stipulated in Clause 22 of the tender schedule with regard to limitations for tenders will come into operation only after acceptance of the bids. A reading of the Clause 22 makes it clear that the tenderers whose tenders were accepted shall not publish and sell guides/key books/work books. The said condition is applicable only for the accepted tenderers, and, it comes into operation only after their bids are finalized and contract is awarded. At the same time, the further submission of the learned Senior Counsel, that some of the bidders have submitted false turnover particulars, also cannot be gone into in this Writ Petition. At the outset, there is no such case projected and no such particulars are furnished in the affidavit filed in support of the Writ petition. Only in the reply affidavit, for the first time, such a case is sought to be projected. Moreover, the said bidders are not arrayed as party-respondents in this Writ Petition. If any false information is submitted with regard to turnover, it is for the petitioners to bring it to the notice of the respondents for taking appropriate action, but the same will not strengthen the case of the petitioners for the relief sought in this Writ petition. In that view of the matter, I do not find any valid ground for grant of relief as prayed for and having regard to the tender conditions, the petitioners have not made out any ground for interference of this Court with the tender process for issuance of directions by way of Writ of Mandamus in exercise its jurisdiction under Article 226 of the Constitution of India.

The Writ petition is devoid of merits, and the same is accordingly dismissed at the admission stage. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED:----------April, 2006.
Msnr